

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")	)	CG Docket No. 11-116
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

**COMMENTS OF AT&T, INC.**

AT&T Inc. (AT&T), on behalf of its subsidiaries, respectfully submits these comments in response to the Further Notice of Proposed Rulemaking (FNPRM) in the docket captioned above, wherein the Commission seeks further comment on measures to prevent the placement of unauthorized charges on bills for common carrier and other services, a practice known as "cramming."

In the FNPRM, the Commission asks whether it should adopt an opt-in consent requirement for third-party billing on wireline bills and whether other regulatory measures (including an op-in requirement) are warranted to prevent cramming for wireless, VoIP and other services.<sup>1</sup> No such additional measures are warranted at this time. As the record in this proceeding shows, the number of reported cramming complaints pales in comparison to the number of wireline and wireless customers.<sup>2</sup> Moreover, the Commission has just adopted new rules to address cram-

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<sup>1</sup> *In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (Cramming)*, CG Docket No. 11-11; *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-In-Billing Format*, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking (April 27, 2012). ("Cramming Order") at ¶ 136.

<sup>2</sup> See, e.g., Joint Comments of the New England Conference of Public Utilities Commissioners at 15 (Maine, Massachusetts, New Hampshire, Rhode Island and Vermont reported a total of 503

ming on wireline telephone bills.<sup>3</sup> The record also shows that carriers, billing aggregators, and industry associations are taking voluntary measures to address cramming.<sup>4</sup> AT&T and Verizon, in fact, have announced that they will cease providing third-party wireline billing services this year for most unaffiliated third-party non-carrier providers. And BSG, one of the largest billing aggregators, has implemented a number of additional, stringent requirements to identify unscrupulous actors and prevent cramming.<sup>5</sup> There is no basis in the record or otherwise upon which the Commission could reasonably conclude at this time that these measures are or will be ineffectual. Therefore, the most reasonable course is for the Commission to give these measures a chance to work before considering additional, onerous regulations. If, in the future, the Commission concludes that existing measures are insufficient, it can consider any appropriate rule changes at that time.

While there is no basis at this time for *any* additional rules in this area, the proposed option requirement would be particularly burdensome and unwarranted. First and foremost, third party services are not a significant source of cramming complaints.<sup>6</sup> CTIA calculated a ratio of

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cramming complaints in 2009, 443 in 2010, and 297 through August 2011); Comments of the Indiana Utility Regulatory Commission at 2-3 (stating it receives approximately 100 cramming complaints per year); Comments of AT&T at 6 (stating it billed third-party charges to approximately two million wireline subscribers in September 2011 and received approximately 2100 cramming complaints in September 2011); Comments of Billing Concepts, Inc. at 6 (stating its level of cramming incidents is one-quarter of one percent).

<sup>3</sup> Cramming Order, Appendix A.

<sup>4</sup> Comments of AT&T at 8-10; Comments of CTIA at 13-16; Comments of Verizon and Verizon Wireless at 3-8; Comments of CenturyLink at 3-4, 12-14; Comments of Frontier Communications at 4-5; Comments of T-Mobile at 3-6; Comments of ITTA at 2; Comments of Sprint at 11-13; Comments of Billing Concepts at 4-6; Comments of ILD at 2; Comments of Payment One at 15.

<sup>5</sup> See, *In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (Cramming)*, CG Docket No. 11-11; *Consumer Information and Disclosure*, CG Docket No. 09-158; *Truth-In-Billing Format*, CC Docket No. 98-170; Comments of Billing Concepts, Inc. (dba BSG Clearing Solutions) at 4.

<sup>6</sup> See, e.g., Reply Comments of The Coalition For a Competitive Telecommunications Market at 5, CG Docket No. 09-158 (December 6, 2011)

one complaint per 646,974 wireless subscriber units per year from 2008-2010.<sup>7</sup> Sprint analyzed FTC complaint data from the same period and calculated a similar ratio: one complaint per every 422,832 wireless subscribers.<sup>8</sup> AT&T itself showed that cramming allegations among its wireline customers amount to only one-tenth of one percent of its wireline billings.<sup>9</sup>

Second, customers that use third parties for traditional telecommunications (or adjunct) services, such as long distance dial around, directory assistance service, operator services and inmate services, by-and-large use these services on an exigent basis. Collect calls, inmate calls, operator service calls of various kinds, and opportunistic use of call around services are unlikely to have been opted into by a customer in advance of receiving or making such a call. An opt-in requirement would thus be confusing to -- not to mention inconvenient for -- customers using these services. Indeed, the situation is exacerbated if customers have to provide opt-in consent each time they use a different third party for these services.<sup>10</sup>

Third, as many participants in this proceeding have noted, an opt-in requirement could cause substantial harm to small providers of telecom services, many of which cannot afford to perform their own billing and rely upon carriers' third party billing services.<sup>11</sup> These include third party providers of services like dial-around toll, DA, and inmate services, among others.<sup>12</sup>

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<sup>7</sup> CTIA Comments at 5, CG Docket 11-116.

<sup>8</sup> Sprint Comments at 11-13, CG Docket 11-116; *see also* T-Mobile Comments at 1-3 (analyzing Commission, FTC, and state commission data).

<sup>9</sup> Comments of AT&T at 5-6.

<sup>10</sup> The Commission has recognized the difficulty this problem presents. *See*, FNPRM at ¶ 140 (“Would consumers adequately anticipate the need for third-party billing before they opt-in or opt-out?”)

<sup>11</sup> *See, e.g.* Comments of United States Hispanic Chamber of Commerce (June 22, 2010); Comments of Clearworld Communications (June 19, 2010), CG Docket 11-116.

<sup>12</sup> A customer could make a blanket opt-in for these services. However, as discussed below, a blanket opt in merely secures the customer's consent to placing the charges on the bill. It effects no material change to the cramming protections themselves.

Requiring those providers to obtain opt-in consent to bill for their services could substantially raise their costs of doing business and threaten their very viability.

An opt-in consent requirement also is wholly unwarranted for affiliate and alliance services billed on the wireline bill. AT&T, for example, offers customers the option of single billing for its affiliate and alliance services, such as Internet services and DirecTV. AT&T customers who elect this billing option are fully aware of the AT&T services (including affiliates and alliances) for which they are being charged. In effect, these customers, by choosing the single billing feature, have already “opted in” pursuant to AT&T’s billing options. An additional regulatory opt-in requirement for affiliated and alliance services is unnecessary to achieve the Commission’s goal in this proceeding.

The justification for a wireless opt-in requirement is perhaps even less compelling. Although data use and demand for mobile data applications are sky-rocketing,<sup>13</sup> the number of wireless cramming complaints remains tiny relative to the number of wireless bills rendered each month.<sup>14</sup> The Commission itself recognized in the Cramming Order that “cramming appears to be less a problem for CMRS consumers than for wireline consumers[.]”<sup>15</sup> The mere fact that the explosive growth of wireless data services is accompanied by a small, corresponding up-tick in cramming complaints is not evidence of the need for costly new regulations.

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<sup>13</sup> Cisco reports that “Global mobile data traffic grew 2.3-fold in 2011, more than doubling for the fourth year in a row. The 2011 mobile data traffic growth rate was higher than anticipated. Last year's forecast projected that the growth rate would be 131 percent. This year's estimate is that global mobile data traffic grew 133 percent in 2011.” Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011–2016 available at [http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c\\_11-520862.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c_11-520862.html). See also *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket 10-33, Fifteenth Report (June 27, 2011) at 9. (“Annual Report”).

<sup>14</sup> Comments of CTIA, CG Docket 11-116 (October 24, 2011).

<sup>15</sup> FNRPM at ¶ 146.

But, here again, it is not just that regulatory intervention is unnecessary; it would be ineffective, harmful, or both. There are two ways the Commission could implement an opt-in policy – a blanket opt-in approach or an individual opt-in approach. A blanket opt-in approach; that is, one in which the customers agree to accept *any* third party charge made to their wireless bills, would not be an effective way to address cramming. The mere fact that a customer has agreed to third party charges on her bill says nothing about whether a particular charge was authorized or not. Thus, such an approach would do nothing to reduce cramming; it would just impose needless bureaucracy and cost. Conversely, an individualized opt-in requirement, one that requires the customer to agree to a third party charge on the wireless bill prior to any transaction with a third party vendor, would be excessively burdensome and would almost certainly have a negative downstream effect on content providers and developers. These innovators, who are an essential part of one of the most dynamic sectors of our economy, rely upon carrier billing services for efficient delivery of their services to consumers. Making that delivery system less customer friendly not only risks cutting off customers from innovative products, it also potentially subjects these entrepreneurs and job creators to financial distress. Such a procedure would be akin to requiring individuals who purchase phone service to have to opt-in to place or receive calls. There is no cause for encumbering commerce in this manner, and the costs of any such requirement would far outweigh any conceivable benefit, especially in light of the abundance of opt-out options (free-of-charge) in the industry.

Parties who advocate for an across the board opt-in requirement (“the stringent requirement”<sup>16</sup>) on wireline and wireless carriers simply do not recognize the enormous costs of the

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FNRPM at ¶136-137.

proposal they advocate.<sup>17</sup> At the very least, carriers would have to reprogram billing systems and implement opt-in verification and tracking procedures, an expensive and resource-consuming undertaking. Indeed, the size and complexity of AT&T's billing system is such that even estimating the cost of changes to it is itself a complicated process. To illustrate, AT&T has seven unique billing platforms between its wireline and wireless businesses plus three online billing platforms.<sup>18</sup> Most of these systems would have to be modified to implement "the stringent requirement." Implementing a change of this scale will require at least 18 months of work.<sup>19</sup>

Estimates of the cost of implementing "the stringent option" are imprecise at this time; but some elements of the project can be estimated based upon prior experiences, particularly AT&T's experience with "opt out" requirements.<sup>20</sup> First, wireline and wireless customers would have to be notified of the change. Since the "opt in" requirement would occur at the account level and not at the level of each individual line, notices would need to go to roughly 30 million landline accounts and 50 million wireless accounts. It costs AT&T about \$1.10 to print and mail a notification to a customer account. Therefore, just the notification of the opt-in change alone would cost in the neighborhood of \$100 million.<sup>21</sup>

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<sup>17</sup> See, e.g., Comments of the Rural Cellular Association, CG Docket No. 09-158, at 5-6 (July 6, 2010); Reply Comments of Verizon Wireless, CG Docket No. 09-158, at 3-4 (July 19, 2010).

<sup>18</sup> For local exchange service, AT&T maintains five Customer Records Information System ("CRIS") platforms. For wireless, it maintains a traditional billing system for CMRS and one for U-Verse (for which there is no third party billing). In addition, there are three online platforms for service ordering and bill payment.

<sup>19</sup> As noted U-Verse has no third party billing and there is no third party billing on the legacy AT&T long-distance service. AT&T updates its billing systems with three releases a year (February, June and October). Depending upon when an opt-in requirement were to become law, implementation of the new requirement could take longer than planned dependent on the release with which the change can be made.

<sup>20</sup> See, e.g. 47 C.F.R. § 64.2007(b).

<sup>21</sup> Including about \$10 million in development cost.

AT&T encourages its customers to make account changes online. Inevitably, however, about 25% of the embedded wireline and wireless base experience a problem or decide to call customer service rather than use the online systems. Each call to customer service has a cost to AT&T of about \$10. Thus, AT&T expects the cost of those calls to amount to almost \$200 million. To this must be added the cost of training customer service representatives. AT&T has approximately 50,000 customer service representatives. The cost of the opt-in training would be their hourly rates multiplied by the length of the training. AT&T estimates that cost to be at least \$1 million. In short, the cost of implementing “the stringent solution” is likely to exceed \$300 million.

On-going costs, which include billing platform modifications in the ordering, account, database, usage and online platforms, changes in the order flow, and increased calls to customer service, are currently estimated at about \$45 million to \$50 million a year. These costs occur in part as a result of turn-over in the embedded base. For example, on the landline side of the business, roughly 20% of the base turns over as a result of relocation, changes in business and the like. Each time a new account is opened, the customer may have to go through the opt-in steps. For wireless, service contracts expire every two years. Renewing customers who have not opted in earlier would have to be made aware of the opt-in choice. AT&T also expects increased calls to customer service when customers find they cannot avail themselves of a service because they have not opted in for the billing.

These costs far outweigh any benefits to an across-the-board opt-in approach for wireline and wireless third-party billing that some parties to this proceeding favor.<sup>22</sup> Less sweeping opt-

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<sup>22</sup> As noted, AT&T’s LECs will soon stop providing billing services to third party enhanced services vendors. At the very least, the FCC should not impose opt in requirements on AT&T’s landline billing during the period of time that the third party billing is being phased out. The costs involved to provide the required notices would simply be money wasted.

in approaches may entail less cost; but most of the billing system changes described above would still occur, producing unacceptably high implementation costs. Given that the number of reported cramming incidents is but a tiny percentage of the total number of telephones bills,<sup>23</sup> many, if not all, carriers would simply consider dropping all third party billing and leave the problem to vendors and customers rather than endure the high cost of a solution in search of a problem.

For these reasons, AT&T urges the Commission to give its new rules time to go into effect. At the same time, the Commission can gauge the effect that AT&T and Verizon's abandonment of third-party billing will have on cramming. Only then can the Commission determine if more steps are required. If, at that time, the FCC determines that an opt-in rule is indicated, that rule should exempt traditional, carrier-affiliated, and carrier-alliance third-party billed services and wireless billing.

Respectfully submitted,



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<sup>23</sup> See, n. 2 above.